

STATE OF THE DIRECTOR OF STATE COURTS OFFICE ADDRESS 2005



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Almost one hundred years ago Roscoe Pound ventured before a hostile audience and articulated his concerns about the administration of justice. That night his remarks were described as an attempt “to destroy that which the wisdom of the centuries has built up.” But thirty years later, the dean of the Northwestern Law School described Pound’s remarks as “the spark that kindled the white flame of progress.” While some started to recognize that the social, technological and economic changes of the twentieth century were putting a strain on the justice system, this flame of progress merely smoldered. Smoldered until a New Jersey lawyer began to take action. Arthur Vanderbilt recognized that many of the issues identified by Roscoe Pound were threatening the justice provided by the nation’s courts.

As president of the American Bar Association (ABA) and Chief Justice of New Jersey, Arthur Vanderbilt began to seek solutions to the causes of popular dissatisfaction with the administration of justice. His tireless efforts included a seventeen-year battle to reorganize the antiquated New Jersey court system, which culminated in the adoption of a new state constitution and a unified court system. Roscoe Pound himself noted that Vanderbilt’s “work for law reform, organization of courts, organization of the administrative work of the courts and for legal education, make a consistent whole and mark him as entitled to a high place among those who have raised our institutions of justice to their highest possibilities.”

In Pound style, I look to the future to outline 4 issues that may cause some to become dissatisfied with Wisconsin’s administration of justice in the coming year. Let’s refer to them as Grounds for Concern and they are: 1) the ability to keep and attract quality judges; 2) adaptation to workforce changes; 3) the allocation of resources to meet workload demands; and 4) blending of technology with the law. In Vanderbilt fashion, I propose responses to these concerns.

Ground #1- The Ability to Keep and Attract Quality Judges

The morning after the announcement of Arthur Vanderbilt as Chief Justice of New Jersey, one of his clients offered him a ride to the train station. On the way he asked Vanderbilt what he was going to be paid. Vanderbilt replied, “\$25,000 a year for an appointment of seven years.” The client responded by saying, “I will give you \$250,000 today if you stay in practice and continue to be my lawyer.” Fortunately for the state of New Jersey, Arthur Vanderbilt turned down the money and as Chief Justice, went on to lead efforts to improve the quality of justice, which we still benefit from to this day.

While the salaries have changed, the situation has not. As the compensation level of judges continues to diminish in comparison to others in the legal field, we have a large number of judges eligible for retirement. Quality attorneys must determine whether the benefits of contributing to their community as a judge outweighs the financial sacrifice of entering public service. In the coming years, it will be further exacerbated as more and more judges will ask this same question as they become eligible to retire.

Currently, nineteen percent of circuit court judges are eligible to retire. In 5 years, fifty-one percent will be eligible and in 10 years it, is eighty-three percent. Wisconsin circuit court judge compensation has slipped from 22nd in the country to 28th and Wisconsin judges will soon be the lowest paid judges in the Midwest. Indeed at times the Wisconsin circuit court judge is the

lowest paid attorney in the courtroom. Arthur Vanderbilt once noted that the basic consideration in every judicial establishment is the caliber of its personnel. He pointed out that the problem of financial security is of importance in obtaining fit persons for judicial office. The current environment does not help in this regard. I understand both the personal frustration you feel, and the institutional problems this presents. Chief Justice Abrahamson has noted some of the efforts we have made to convince the Governor, lawmakers, and the public of the importance of this issue. This is what we know now.

A compensation plan should be submitted to the Legislature in the next few weeks. It is anticipated that it will contain the same general wage adjustment for all non-represented employees. No classification will be receiving equity adjustments. The proposed compensation plan apparently will recommend increases of 2% on July 1, 2005, 2% on July 1, 2006, and 1% on April 1, 2007 for non-represented employees. We are expecting similar recommendations for the judicial rates of pay. Obviously, these increases will be appreciated but do not achieve equity for judges. However, it is my understanding that, barring any cuts to the compensation reserves during the budget, a follow-up compensation plan will likely be submitted to the legislative Joint Committee on Employment Relations. We will continue to make every effort with the Governor and the Joint Committee on Employment Relations to ensure that progress is made concerning judicial compensation.

The court system is committed to get compensation to a point where judges want to continue to serve their community and excellent attorneys are interested in becoming judges. Arthur Vanderbilt said no to a substantial financial offer and became a judge. He went on to make a difference in the administration of justice. I do not want to be responsible for losing someone of the likes of Arthur Vanderbilt because we didn't make every effort to ensure judicial compensation is reasonable.

Ground #2- Adaptation to the Change in Workforce

Judges are not the only people who may be looking to retire in the next 5-10 years. The baby boom generation has put pressure on our society as they have moved through life and soon the pressure will be on retirement systems, and the resulting loss of workforce. Clerks of circuit court offices will lose experienced staff, district attorney and public defender offices will lose experienced lawyers, and the court's administrative staff will lose good people who have provided valuable support over the years. Our ability to adapt to this societal trend will be critical in our ability to keep the court system running effectively.

As an example, let's look at the responsibility of making the trial record. We all agree that we have dedicated individuals serving as court reporters.

The average age of court reporters in the state is forty-six years old and one-third of these employees will be eligible to retire in the next 10 years. Over the past few years, we have faced continued difficulties in recruiting new court reporters to the court system primarily due to the fact that the number of trained court reporters is dwindling. For example, Grant County recently resolved a long-term vacancy by finding a court reporter from Texas. These sporadic problems of finding qualified court reporters are likely to become more widespread. Here is what we are doing.

First, we have expanded the definition of certified court reporter in order to increase the potential pool of court reporter applicants. We now currently accept both national certifications from the National Court Reporters Association and the National Verbatim Reporters Association.

Judge Dorothy Bain in Marathon County has benefited from this change with the hiring of her court reporter who is a voice writer.

Second, in the coming year we are looking to strengthen our relationship with the Wisconsin's court reporting schools in the hopes of attracting more students to the profession.

Third, we are proceeding with two pilot projects to test the use of digital audio recording in the court system. The implementation of these pilot projects is not a step to eliminate court reporters. As long as we have someone available to take the record, we will use him or her. The implementation of these pilots is to help us be prepared for a time and place when we are unable to find someone qualified to accept an official court reporter position. They should answer the many questions about how digital audio recording would work before we are presented with a widespread shortage of court reporters. Taking the record is a critical component to our system. I want to make sure we are able to meet that responsibility in the future.

As Vanderbilt noted "individual men have the capacity to stake out the course of the future rather than merely to observe social forces, powerless to change them."

Ground #3- The Allocation of Resources to Meet Workload Demands

Later today you will hear a brief presentation about an initiative to review and revise the current methodology we use to determine the need for judicial resources, commonly referred to as the weighted caseload study. The current methodology is dated and incomplete.

It is dated because it is premised on a time study that took place in 1995. We all know that laws have changed enough during that time to make the results out-of-date. Also, the study is incomplete due to the fact that it does not factor in the court commissioners' contributions for case processing. This project will address both of these concerns.

We are proceeding with this study because not only will it provide chief judges with an administrative tool for how to best assign judicial resources within a district, it also will help us identify any need we may have for additional permanent judicial resources. The current number of circuit court judges has remained constant since 2000. The last time a director of state court's bill requesting a judgeship passed was 1998. Although the current financial condition of the state does not bode well for a judgeship bill, we intend to have the best possible information to justify our request at the appropriate time.

We cannot get good information without your help. In 1995 we conducted a time study using a sample of twelve counties. This time we will be asking all of you to participate. Your input will be critical to a successful effort and the long-term viability of the study.

Over the past four years, fiscal restraints have resulted in a forty percent reduction in the use of reserve judges, a twenty-three percent reduction in use of freelance court reporters, and on-going vacancies in the administrative office. As you know, we currently are in the midst of working through the biennial budget process with the other two branches of government. In his budget bill released earlier this year, the Governor proposed a \$1.3 million lapse for the court system over the coming biennium. We are asking the legislature to support the Governor's budget, and not make any further reductions than proposed. Further reductions will affect our ability to handle the workload and meet our constitutional responsibilities. Because the Joint Finance Committee may be acting on our budget tomorrow, I will be at the Capitol instead of

here with you. I apologize for my absence, but I think it is important that we continue our advocacy for the court system.

Ground #4 – Blending of Technology With the Law

I am pleased that we continue to utilize technology to improve the administration of the court system. During the conference you will have the opportunity to learn more about the Truth-In-Sentencing (TIS) calculator. Technology is improving the accessibility and efficiency of the court system. For example, CCAP is piloting electronic case filing in Washington County. This new system will save valuable staff time within Clerk's offices by eliminating the keying of information from paper documents into the CCAP database. Later this year, self-represented litigants will have the option of using a pro se website for divorce filings. However, we will continue to face issues that require a balancing act between the use of the technology and the protection of individual rights. The use of videoconferencing and the expansion of e-filing are just 2 examples.

In recent years the advent and growing popularity of Wisconsin Circuit Court Access (WCCA) epitomizes the struggle between technology and the law. WCCA presents court records that are open to public inspection, but public inspection used to require trips into the deep recesses of the county courthouse and so, in practice, most records were never examined by the public. Now that public inspection of court records involves just a few keystrokes, court records are inspected around the clock by employers, legislators, credit services, neighbors, parents, teachers, friends, spouses, your colleagues on the bench. The number of complaints we receive about what is on WCCA is steadily increasing. I will soon convene a committee similar to the one that originally developed the Policy on the Public Information Over the Internet. The group of privacy advocates, media representatives, lawyers, judges, clerks of court and others – will review the policy and determine whether change is needed. Balancing competing interests, making adjustments when needed, standing firm when stability is the best policy – these are our duties and we shall carry them out honestly and to the best of our ability. I believe, no matter what changes may result, that a vigorous and open discussion of the issues will foster public satisfaction with this very public part of our system.

While Arthur Vanderbilt said judicial reform was “no sport for the short-winded,” let me leave you with a quote from Chief Justice Hughes concerning the importance of addressing the issues I have outlined today. He said, “you cannot maintain democratic institutions by mere forms of words or by occasional patriotic bows. You maintain them by making the institutions of our Republic work as they are intended to work.”

I am confident together we can make the courts “work as they are intended to work.”